

I look forward to working with my colleagues and all interested parties in an effort to properly balance the rights of content owners, consumers and other constructive users of content.

I will welcome their suggestions about how the measure might be further improved as it moves forward in the legislative process.

FAIR USE ACT OF 2007

Section 1 sets forth the title of the bill, the "Freedom And Innovation Revitalizing U.S. Entrepreneurship Act of 2007."

Section 2 would make two amendments to the Copyright Act.

Subsection (2)(a) would limit the availability of statutory damages against individuals and firms who may be found to have engaged in contributory infringement, inducement of infringement, vicarious liability, or other indirect infringement. Congress developed the statutory damages award process in a world of physical works, principally paper and vinyl. Today, in a world in which silicon is the principal medium of storage, statutory damages can be so large and disproportionate that entrepreneurs and consumer electronics and information technology companies are declining to bring new technology to market out of fear that they could be bankrupted by an adverse finding of secondary liability—even in cases in which they believed on the advice of counsel that their new innovative hardware or software products would be found legal if they survived costly litigation with its highly intrusive discovery. Under the bill, statutory damages would remain available for conduct that no reasonable person could have believed to be lawful. With this condition in the law, entrepreneurs, venture capitalists, and consumer electronics and information technology companies would feel more confident in going to court, if necessary, for a fair hearing on the merits, and aggrieved parties could get relief from scofflaws. Moreover, actual damages would continue to remain available to a person harmed by secondary infringement.

Subsection (2)(b) would effectively codify the Supreme Court's holding in the *Betamax* decision with respect to hardware devices. In *Sony Corp. v. Universal City Studios, Inc.*, 464 U.S. 417 (1984), the Court held that because the *Betamax* videocassette recorder was capable of substantial, commercially significant non-infringing uses, two studios—which were concerned about consumers making in-home off-air tapes of television broadcasts—could not hold Sony contributorily liable for copyright infringement based on other possible or even predominate infringing uses. To provide greater legal certainty to legitimate CE companies bringing new products to market in the wake of the uncertainty created by the Supreme Court's decision in *Metro-Goldwyn-Mayer Studios v. Grokster, Ltd.*, 545 U.S. 913 (2005), subsection (b) would immunize these and other hardware companies, as well as entrepreneurs, from copyright infringement liability based on the design, manufacture or distribution of hardware devices (or components of those devices) that are capable of a substantial, commercially significant non-infringing use. The enactment of this clarifying provision, for avoidance of doubt with respect to hardware devices, is not intended to have any negative effect on the continued availability and application of the *Betamax* standard with respect to services and software products or to non-commercial activities.

Section 3 would amend the Digital Millennium Copyright Act.

Subsection (3)(a) would codify the decision by the Register of Copyrights, as affirmed in a determination made by the Librarian of Congress under section 1201(a)(1) of the

DMCA, to allow consumers to "circumvent" digital locks in six discrete areas. The determination was made after a thorough rule making process, in which the Register took extensive testimony from rights holders, consumers, and other interested parties. By codifying the Librarian's determination, Congress would ensure that these practices may continue, without the need for extensive review by the Register and the Librarian under section 1201(a)(1) three years from now. The importance of these exemptions was demonstrated by the Register's extensive supporting analysis. Making them permanent would create greater certainty among various user communities. The need to codify the exemptions is all the more compelling now that TracFone has challenged the entire DMCA rulemaking process as an unlawful delegation of legislative authority.

As determined by the Librarian in the Final Rule published in the Federal Register on November 27, 2006, persons making non-infringing uses of the following six classes of works will not be subject to the prohibition against circumventing access controls of the DMCA:

1. Audiovisual works included in the educational library of a college or university's film or media studies department, when circumvention is accomplished for the purpose of making compilations of portions of those works for educational use in the classroom by media studies or film professors.

2. Computer programs and video games distributed in formats that have become obsolete and that require the original media or hardware as a condition of access.

3. Computer programs protected by dongles that prevent access due to malfunction or damage and which are obsolete.

4. Literary works distributed in ebook format when all existing ebook editions of the work contain access controls that prevent the enabling either of the book's read-aloud function or of screen readers that render the text into a specialized format.

5. Computer programs in the form of firmware that enable wireless telephone handsets to connect to a wireless telephone communication network, when circumvention is accomplished for the sole purpose of lawfully connecting to a wireless telephone communication network.

6. Sound recordings distributed in compact disc format and protected by technological protection measures that control access to lawfully purchased works and create or exploit security flaws or vulnerabilities that compromise the security of personal computers when circumvention is accomplished solely for the purpose of good faith testing, investigating, or correcting such security flaws or vulnerabilities.

As an extension of the Librarian of Congress's determination, subsection (3)(b) of the FAIR USE Act would enable individuals in six narrowly defined circumstances to circumvent technological protection measures:

Paragraph (i) would extend the Librarian's determination with respect to excerpts of audiovisual works for use in all classrooms (instead of just in college media studies classrooms). Under the provision, an instructor could circumvent a digital lock on audiovisual works included in the collection of a library or an archives in order to make compilations of portions of those works for educational use in a classroom at all grade levels.

Paragraph (ii) would authorize consumers to circumvent a lock on a DVD or other audiovisual work in order to skip past commercials at the beginning of it or to bypass personally objectionable content (such as pornographic scenes) contained in the work.

The provision does not authorize consumers to make back up DVDs for archival or any other purpose.

Paragraph (iii) would authorize consumers to transmit a work over a home or personal network but not to circumvent for purposes of uploading that work to the Internet.

This provision would ensure that consumers can make fair use of content they have lawfully acquired, as long as they do not engage in the mass, indiscriminate redistribution of that content over the Internet.

Paragraph (iv) would allow individuals to access public domain works that are in a collection of works made up primarily of public domain works. It thus would preclude content owners from denying the public access to public domain works simply by repackaging them with one or more copyrighted works and then applying a digital lock to restrict or deny access to all of the works.

Paragraph (v) would advance long-established First Amendment rights by authorizing reporters, teachers, and others to circumvent digital locks blocking access to works of substantial public interest, when circumvention is accomplished solely for purposes of criticism, comment, news reporting, scholarship, or research.

Paragraph (vi) would authorize circumvention of technological measures that effectively control access to copyrighted works for the purpose of enabling a library or an archive to preserve or secure a copy of a work or to replace a copy that is damaged, deteriorating, lost, or stolen. This would ensure that libraries and archives can continue to engage in activities specifically authorized by section 108 of the Copyright Act.

The exceptions to the DMCA set forth in subsections (3)(a) and (b) are based on extensive comments and testimony received by the Copyright Office and the Congress. Their enactment is not intended and should not be construed as in any way limiting other rights or interpretations of either the Copyright Act or the DMCA as to which consumers and other users have had their rights vindicated in the courts or those which have not been addressed by the courts.

TRIBUTE TO MS. PHYLLIS C. CAMPBELL, SENIOR EXECUTIVE SERVICE

HON. TODD RUSSELL PLATTS

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, February 27, 2007

Mr. PLATTS. Madam Speaker, I rise today to pay tribute to Ms. Phyllis C. Campbell, who will retire from the Defense Logistics Agency's, DLA, Defense Distribution Center, DDC, New Cumberland, Pennsylvania, on March 3, 2007. Ms. Campbell's distinguished government career spans 40 years, and her record of achievement during this period reflects greatly upon herself and upon the organizations with which she has served. Her contributions to the national defense will be missed as she moves on to new and exciting opportunities.

Ms. Campbell was appointed to the Senior Executive Service position of deputy commander, DDC in July 1998. The DDC is DLA's Lead Center for distribution and has management responsibility for 26 military distribution centers around the world.

Ms. Campbell hails from Steelton, Pennsylvania and has followed a varied career of increasing responsibility culminating in her appointment as deputy commander. In 1966, she entered the Federal service in the Transportation Division at Defense Distribution Depot